

Civil Action No.

1. This is a civil action for cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (“CERCLA”). The United States seeks to recover response costs it has incurred in conducting removal activities resulting from the releases or threatened releases of hazardous substances into the environment at the Crescent Plating Superfund Site (the “Site”) located on the north side of the City of Chicago, Cook County, Illinois. The United States also

seeks declaratory relief that the defendants will be liable for all future response costs to be incurred by the United States at the Site and any area to which contamination may have migrated from the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) because the release or threat of release of hazardous substances giving rise to this claim occurred in this district and because the Site is located in this district.

THE DEFENDANTS

Sahli Enterprises, Inc.

4. Defendant Sahli Enterprises, Inc. ("Sahli Enterprises") is incorporated in the State of Illinois.

5. Sahli Enterprises is the beneficiary of Illinois Land Trust 1505 (the "Land Trust"), which holds title to the three parcels that comprise most of the Site. The Land Trust was created on June 24, 2003 by a Trust Agreement with First Nations Bank acting as Trustee. On December 19, 2003, First Nations Bank received a warranty deed in trust for the Site, thereby conveying title to the Site to the Land Trust on that date.

Michael Sahli

6. Defendant Michael Sahli ("Sahli") is a natural person and a resident of the State of Illinois with a residence at 126 Hidden View, Westmont, Illinois 60559.

7. Sahli is the President and sole shareholder, officer, and employee of Sahli Enterprises.

8. In carrying out Sahli Enterprises's business, Sahli exercised complete control over the corporation, including negotiating and executing all agreements with creditors, attorneys, and other businesses and individuals, or personally appointing other individuals to act on his behalf.

9. Sahli handled all aspects of Sahli Enterprises's purchase of the Site, including creating the Land Trust that holds title to the Site and assigning Sahli Enterprises the beneficiary of the Land Trust; using his finances to purchase the Site; negotiating the terms of an October 31, 2003, Agreement and Real Estate Sale Contract to purchase the Site and signing both documents; and visiting the Site during negotiations.

GENERAL ALLEGATIONS

10. The Site is on the site of two former metal plating shops located at 3640-3650 W. Armitage Ave. and 2011 N. Lawndale Ave. and is located in a mixed residential, commercial, and light industrial area on the north side of Chicago. Crescent Plating Works, Inc. ("Crescent Plating") operated at the Site from approximately 1974 until November 2003. Crescent Plating's primary processes included plating steel and brass objects with zinc, cadmium, nickel, chrome, brass, and copper.

11. On information and belief, on or about November 14, 1997, the Chicago Department of Environment ("CDOE") investigated a complaint from the property owner neighboring Crescent Plating. The investigation revealed a possible hazardous substance with a pH level of 10 that had apparently originated from the Crescent Plating property, leached through the soil, and was puddled in the northwest corner of the basement of the neighboring property.

12. On information and belief, on or about June 27, 2002, another CDOE inspection documented additional seepage of apparent plating wastes through the neighboring basement wall.

13. On information and belief, on or about August 29, 2002, while conducting an inspection of Crescent Plating, the Metropolitan Water Reclamation District of Greater Chicago ("MWRD") investigated an additional complaint from the same neighboring property owner regarding observed seepage of a dark oily substance into the basement of the neighboring property. Analysis of the substance showed high concentrations of copper, zinc, iron, and nickel and a pH of 9.9.

14. On or about May 8, 2003, both EPA and CDOE inspected the neighboring basement and conducted a Phase II assessment. The subsurface soil samples collected during that assessment contained elevated concentrations of total chromium, cyanide, mercury, and trichloroethene.

15. On information and belief, on or about January 31, 2003, a CDOE inspector observed nickel and chromate solution leaking onto the ground from eight drums that were stored outside. The drums were not secured and were accessible to the public at the time of the inspection.

16. On information and belief, from at least July 2002, Crescent Plating stopped sending its filter cake off-site for appropriate treatment and disposal. Parts of the on-site wastewater treatment system were subsequently used to hold this sludge, including a 60,000 gallon clarifier, a 2,025 gallon sludge holding tank, and the filter press.

17. On or about July 11, 2003, MWRD revoked Crescent Plating's wastewater discharge permit due to ongoing violations of their discharge limits.
18. On or about October 24, 2003, EPA responded to a request by CDOE to inspect the Crescent Plating facility and assess the need to conduct a CERCLA removal action.
19. On information and belief, during at least the last week of October 2003, Crescent Plating was storing plating wastes in drums and roll-off boxes in an unsafe manner apparently because it could not process and discharge the waste since its wastewater discharge permit had been revoked a few months earlier.
20. On or about October 29, 2003, CDOE ordered Crescent Plating to cease and desist from all activity, including plating operations, contributing to a nuisance, and to immediately abate the nuisance.
21. On or about November 11, 2003, CDOE ordered Crescent Plating to vacate the premises because cleanup measures were not taken at the facility pursuant to an October 30, 2003 agreement between CDOE and Crescent Plating.
22. From December 15, 2003 through June 7, 2004, EPA conducted an emergency removal action at the Site to remove hazardous substances, pollutants, and contaminants.
23. During the course of its removal activities, EPA identified deterioration in the concrete floors in two areas in the Crescent Plating buildings that were, on information and belief, due to contact with acid over a period of years. Among other items, EPA removed fifteen 5,000-gallon tankers of sludge and hazardous liquids, 40 drums of various acids, solvents, and flammable and corrosive liquids and solids, and 23 20-cubic yard roll-off boxes of chromium sludge and corrosive sludge, which were unsafely housed in the Crescent Plating buildings.

24. Hazardous substances, including, but not limited to, trichloroethene, chromium, mercury, cyanide, and nickel and chromate solution were found to be stored in an illegal and unsafe manner in drums, vats, and other containers at the Site. The contents of some of the containers had spilled on to the floor, which was cracked in multiple places.

25. In performing the removal action, as of July 31, 2005, EPA has incurred at least \$1,193,581.60 in response costs, including, but not limited to, EPA payroll, contractor costs, and indirect costs, in connection with the Site for actions taken to respond to releases and threatened releases of hazardous substances at the Site. The United States continues to incur response costs, including its expenses in seeking to recover money spent, for actions taken at the Site.

LEGAL FRAMEWORK OF CERCLA § 107 CLAIM

26. Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

27. The President's authority under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has been lawfully delegated to the Regional Administrator of Region 5 of EPA pursuant to Executive Order 12,580 (January 23, 1987) and 52 Fed. Reg. 2923 (January 29, 1987).

28. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a vessel or a facility;

... from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substances, shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . .

29. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that “the amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).”

30. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides that in an action for recovery of costs, “the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

31. “Facility” is defined in CERCLA Section 101(9), 42 U.S.C. § 9601(9), as “any building, structure, installation, equipment, pipe or pipeline” or “any site or area where a hazardous substances has been deposited, stored, disposed of, or placed, or otherwise come to be located”

32. “Hazardous substance” is defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), by reference to other federal statutes and by reference to a list of substances published by EPA at 40 C.F.R. § 302.4.

33. "Release" is defined in CERCLA Section 101(22), 42 U.S.C. § 9601(22), as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)"

34. "Response," as defined in CERCLA Section 101(25), 42 U.S.C. § 9601(25), includes "removal" actions and enforcement activities related thereto.

35. "Person" is defined in CERCLA Section 101(21), 42 U.S.C. § 9601(21), as "an individual, firm, corporation"

36. "Owner" is defined in CERCLA Section 101(20)(A)(ii), 42 U.S.C. § 9601(20)(A)(ii), as "any person owning or operating [an onshore] facility."

CLAIM FOR RELIEF
(CERCLA § 107 Against Sahli Enterprises and Sahli)

37. Paragraphs 1-36 are realleged and incorporated herein by reference.

38. The Site is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

39. Trichloroethene, chromium, mercury, cyanide, and nickel and chromate solution are "hazardous substances" within the meaning of Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9607(a).

40. Hazardous substances, including, but not limited to, trichloroethene, chromium, mercury, cyanide, and nickel and chromate solution, were "released" or there was a substantial threat of "release" of these hazardous substances, within the meaning of Sections 101(22) and

107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a), at the Site. The presence of hazardous substances at the Site presented a risk to human health and the environment, including, but not limited to, human ingestion and inhalation, soil contamination, and offsite migration.

41. Releases and threats of releases of hazardous substances at the Site caused, and continue to cause, the United States to incur “response costs” within the meaning of Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a).

42. The actions taken by the United States in connection with the Site constitute “removal” and “response” actions within the meaning of Sections 101(23) and 101(25) of CERCLA, 42 U.S.C. §§ 9601(23) and 9601(25).

43. The response actions undertaken by the United States at the Site, and the costs incurred incident to these actions, are not inconsistent with the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300, as amended.

44. Each Defendant is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

45. Sahli Enterprises is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), because it is the current owner of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), because it is the beneficiary of the Land Trust that holds title to the Site.

46. Sahli is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), because he is the alter-ego of Sahli Enterprises. At all times relevant to this complaint, Sahli’s control over Sahli Enterprises was so complete that the company had no separate mind, will, or

existence of its own. In particular, Sahli controlled Sahli Enterprises and completed all aspects of the transaction that resulted in Sahli Enterprises taking a beneficial interest in the Land Trust that holds title to the Site.

47. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Sahli Enterprises and Sahli are jointly and severally liable to the United States for all costs of response actions that the United States has incurred and will incur in connection with the Site.

48. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaratory judgment on liability should be entered against both Defendants that will be binding in any subsequent action or actions seeking to recover further response costs or damages incurred by the United States in connection with this Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), enter a judgment in favor of the United States and against the Defendants that the Defendants are jointly and severally liable for all unreimbursed response costs incurred by the United States, including prejudgment interest;
2. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter a declaratory judgment in favor of the United States and against the Defendants that the Defendants are jointly and severally liable for future response costs incurred by the United States in connection with the Site and any area to which the contamination at the Site may have migrated;

3. Award the United States its costs of bringing this action; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Dated

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